

ORIGINAL RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 25 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review —)
Spectrum Aggregation Limits)
for Wireless Telecommunications Carriers)
)
Cellular Telecommunications Industry)
Association's Petition for Forbearance)
from the 45 MHz CMRS Spectrum Cap)
)
Amendment of Parts 20 and 24 of)
the Commission's Rules — Broadband PCS)
Competitive Bidding and the Commercial)
Mobile Radio Service Spectrum Cap)
)
Implementation of Sections 3(n) and)
332 of the Communications Act)
)
Regulatory Treatment of Mobile Services)

WT Docket No. 98-205

WT Docket No. 96-59

GN Docket No. 93-252

COMMENTS OF AMERICA ONE COMMUNICATIONS, INC.

America One Communications, Inc. ("America One") hereby submits these comments concerning the above-captioned Notice of Proposed Rulemaking ("NPRM"). America One is one of the leading resale carriers of wireless services in the United States. As such, America One has a substantial interest in the Commission's efforts to ensure that the mobile telecommunications industry grows into a robustly competitive market. The presence in the market of America One, and other wireless resale carriers, contributes significantly to that goal. Wireless resellers benefit consumers by increasing service and price options, and by providing services to underserved and unserved market segments.¹

No. of Copies rec'd 0+13
List ABCDE

¹ See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, Memorandum Opinion and Order, WT Docket No. 98-100 (rel. July 2, 1998) ¶ 35 (the "PCIA Order").

America One understands why the Commission wishes to streamline its oversight of the wireless industry and reassess the utility of the CMRS spectrum cap. This review and reassessment, however, should not take place in a vacuum. To the extent that the Commission allows greater CMRS spectrum aggregation, the result will likely be fewer carriers, diminished competition, and reduced service options for consumers. These adverse consequences make it all the more vital that the Commission retain and enforce competition-enhancing rules such as the CMRS resale rule.²

DISCUSSION

In the NPRM, the Commission has asked whether it should repeal, modify, or forbear from enforcing its 45 MHz CMRS spectrum cap. In making this determination, the Commission has said that it will consider "competitive changes in the CMRS market" and "the goals that the spectrum cap was initially designed to achieve."³ Further, the Commission has identified a number of specific alternatives to the current spectrum cap and asked for comment on those alternatives.⁴

The Commission's decision in this proceeding will have profound implications for the CMRS market. Although America One takes no position on the specific alternatives identified by the Commission, it opposes any action that will have an adverse impact on competition in the wireless market. To the extent the Commission permits greater spectrum aggregation, resulting in fewer carriers and even fewer meaningful choices for consumers, it is essential that the Commission retain and bolster the CMRS resale rule to foster competition in a market that is not yet fully competitive.

I. The CMRS Spectrum Cap Has Been Instrumental In Promoting New Entry Into The Market.

The CMRS spectrum cap was adopted almost five years ago to guard against anticompetitive spectrum aggregation and to foster new entry into the wireless telecommunications market.⁵ As expected, the spectrum cap has played a vital role in the Commission's regulation of CMRS services. Licenses in new mobile services

² 47 C.F.R. § 20.12(b).

³ NPRM ¶ 7.

⁴ Id. ¶ 8.

⁵ Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 7988, 8100-8107 (1994).

have been more broadly distributed and “competition-eroding spectrum consolidation” has been forestalled.⁶

The trend toward merger in the communications industries should give the Commission pause as it considers changes to the CMRS spectrum cap that could result in fewer market participants. Within the past few months, a number of major CMRS carriers have announced their intent to merge or otherwise consolidate their operations. In many cases, the surviving consolidated entity will exceed the current 45 MHz spectrum cap in a number of markets. For example, the proposed combination of SBC Communications and Ameritech Corporation will likely exceed the spectrum cap in Chicago, Illinois, and St. Louis, Missouri. Likewise, a merged Bell Atlantic Corporation/GTE Corporation entity will likely exceed the spectrum cap in El Paso, Texas, Las Cruces, New Mexico, Honolulu, Hawaii, Houston, Texas, and Tampa, Florida.⁷

The current rule would require these merged entities to divest themselves of one or more CMRS licenses, which would then be available to new entrants. An increase in the number of market participants in the wireless industry often results in the introduction of new service plans and better pricing options for consumers. To the extent the Commission’s elimination or modification of the spectrum cap results in greater spectrum concentration, consumers will be denied the benefits that new market entrants would bring.

II. To The Extent That The Commission’s Rules Will Permit Greater CMRS Spectrum Aggregation, The Importance Of The CMRS Resale Rule Will Increase Concomitantly.

Only last year the Commission concluded — rightly — that “the evolution of the CMRS sector is still at an early stage” and that competition in the market is not yet mature.⁸ There have been no significant market changes since that time to call that conclusion into question.

⁶ NPRM ¶ 37.

⁷ See Kristen Beckman, *Prime Wireless Properties Could Be Up For Grabs*, Radio Communications Report, pp. 1, 46 (Aug. 10, 1998).

⁸ NPRM ¶ 34; see also PCIA Order ¶¶ 18, 22, 38-40 (finding that the CMRS market remains concentrated and in need of additional competitive entry).

Although it is true that prices for some wireless telecommunications services are falling,⁹ most of the price decreases have occurred only with respect to calling plans that require a minimum monthly purchase of large minute bundles. This leads to high monthly fees that render the seemingly low per-minute rates well beyond the reach of most consumers. Moreover, wireless service rates are not as low as they would be in a truly competitive market since the average rate remains far above the per minute marginal cost of providing service.

Indeed, there is an alarming trend among facilities-based carriers toward increased prices for wireless local calls. Recent studies indicate that the average price per local wireless call has gone up as a result of marketing efforts that are targeted at high-end and high-volume users.¹⁰ This trend undermines the substitutability of wireless services for wireline local service and reinforces consumer perceptions that wireless services are reserved for a special niche of the communications market.

Modifying or eliminating the spectrum cap to allow greater spectrum aggregation could exacerbate the problems of a market that is not yet fully competitive. By allowing the cycle of spectrum aggregation and market consolidation to begin, the Commission may slow or reverse the competitive expansion that is underway and recent competitive gains may be erased. Consumers may find that, once again, there will be but a few CMRS carriers in most markets, each offering similar service packages at rates that only high-end business users and the affluent can afford.

As spectrum aggregation results in fewer facilities-based competitors, resale will assume an ever more important role in fostering competition. The disappearance of service options due to the elimination of a facilities-based carrier can be mitigated by the introduction of new service options offered by resellers. Unfortunately, a majority of facilities-based carriers continue to oppose resale. In an industry in which few facilities-based carriers are receptive to resale, further consolidation of CMRS licenses will leave even fewer viable partners for resale carriers. For there to be a viable resale option, therefore, the mandatory resale requirement must be preserved.

⁹ See NPRM ¶ 34.

¹⁰ See Lynnette Luna, *One-rate Plans Lead to Higher Local Pricing*, Radio Communications Report, p. 3 (Nov. 30, 1998).

Accordingly, if the CMRS spectrum cap is relaxed or eliminated, leaving facilities-based carriers free to consolidate CMRS holdings and to acquire new CMRS authorizations to the exclusion of new entrants, the continued application of the CMRS resale requirement will become of paramount competitive importance.

CONCLUSION

America One takes no position on whether the CMRS spectrum cap should be modified or eliminated. To the extent, however, that the Commission permits greater aggregation of CMRS spectrum, it should retain or bolster other competition-enhancing rules, such as its rule prohibiting restrictions on CMRS resale.

Respectfully submitted,

AMERICA ONE COMMUNICATIONS, INC.



/s/ W. Kenneth Ferree

Henry Goldberg

W. Kenneth Ferree

Goldberg, Godles, Wiener & Wright

1229-19th Street, N.W.

Washington, D.C. 20036

(202) 429-4900

Its Attorneys

Raidza Wick, Esq.
2650 Park Tower Drive
4th Floor
Vienna, VA 22180
(703) 208-2885

January 25, 1999